

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
O. O. C. J.**

SUMMARY SUIT NO.1499 OF 2004

Divyesh K .Kothari. ...Plaintiff.  
Vs.  
M/s.Aata, Gems & Ors. ...Defendants.  
....  
Mr. M.M. Vashi for the Plaintiff.  
.....

**CORAM : DR.D.Y.CHANDRACHUD, J.**  
4<sup>th</sup> June 2007.

**P.C.:**

The suit has been instituted for the recovery of an amount of Rs.25,67,850/- on the basis of a written contract comprised in three Jangad notes dated 20<sup>th</sup> February 2001, 22<sup>nd</sup> February 2001, and 27<sup>th</sup> February 2001. At the hearing of the Summons for Judgment, leave to defend was granted to the Defendants conditional on a deposit of an amount of Rs.25,67,850/- within 12 weeks from the date of the order of the Court. The condition contained in the order dated 22<sup>nd</sup> December 2005 has not been complied with. A certificate of non-deposit has been issued by the Master and Assistant Prothonotary on 15<sup>h</sup> July 2006.

The Defendants having failed to comply with the

condition subject to which leave to defend the suit was granted, the Plaintiff will be entitled to a decree under the provisions of Order 37 of the Code of Civil Procedure, 1908. Even otherwise, the claim of the Plaintiff is based on a written contract as envisaged by Jangad notes and falls within the purview of Order 37 of the Code of Civil Procedure, 1908. Counsel appearing on behalf of the Plaintiff has filed a compilation of the original documents on the basis of which the claim in the suit has duly proved.

In the circumstances, the suit shall stand decreed in terms of prayer clauses (a) and (b) with the modification that the Plaintiff will be entitled to interest at the rate of 12% per annum from the date of the suit, until payment or realisation.

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